



in which to respond to the complaint and that defendant did in fact file his motion to dismiss on that date. Therefore, defendant is not in default. Accordingly:

IT IS ORDERED that plaintiff's Motion for Judgment By Default, construed as a motion for entry of default against defendant (docket # 18), be and hereby is DENIED.

DONE AND ORDERED this 19th day of May, 2005.

/s/ Joseph G. Scoville  
United States Magistrate Judge